Supreme Court, U.S.
FILED

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No:

In the Supreme Court of the United States

JAY NOLAN RENOBATO,
Petitioner

versus

BUREAU OF THE PUBLIC DEBT
Respondent

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

SUPPLEMENTAL APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U.S. COURT OF APPEALS
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No. 00-20555
Conference Calendar
D. C. Docket No. H - 00 - C V- 425

JAY NOLAN RENOBATO
Plaintiff-Appellant

v.

BUREAU OF THE PUBLIC DEBT
Defendant-Appellee

Appeals from the United States District Court for the Southern District of Texas, Houston.

Before SMITH, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the appeal is dismissed as frivolous.

IT IS FURTHER ORDERED that plaintiff-appellant pay to defendant-appellee the costs on appeal to be taxed by the Clerk of this Court.

ISSUED AS MANDATE: APR 2 6 2001

TITLE 15 UNITED STATES CODE (15 U.S.C.)
CHAPTER 1- MONOPOLIES AND COMBINATIONS IN RESTRAINT OF TRADE

Sec.

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§ 1. Trusts, etc., in restraint of trade illegal; panalty.

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

§ 2. Monopolizing a trade a felony; penalty.

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,00,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

§ 3. Trusts in Territories or District of Columbia illegal; combination a felony.

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine

not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or both said punishments, in the discretion of the court.

§ 4. Jurisdiction of courts; duty of United States attorneys; procedure.

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1 to 7 of this title; and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before the final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

§ 5. Bringing in additional parties.

Whenever it shall appear to the court before which any proceeding under section 4 of this title may be pending, that the ends of justice require that other parties should be brought before the court, the court may issue them to be summoned, whether they reside in the district in which the court is held or not; and subponeas to that end may be served in any district by the marshal thereof.

§ 6. Forfeiture of property in transit.

Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section 1 of this title, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

§ 6a. Conduct involving trade or commerce with foreign nations.

Sections 1 to 7 of this title shall not apply to conduct involving trade or commerce (other than import trade or import commerce) with foreign nations unless-

(1) such conduct has a direct, substantial, and reasonably foreseeable effect-

(A) on trade or commerce which is not trade or commerce with foreign nations, or on import trade or import commerce with foreign nations; or

(B) on export trade or export commerce with foreign nations, of a person engaged in such trade or commerce in the United States; and

(2) such effect gives rise to a claim under the provisions of section 1 to 7 of this title, other than this section.

If sections 1 to 7 of this title apply to such conduct only because of the operation of paragraph (1)(B), then sections 1 to 7 of this title shall apply to such conduct only for injury to export business in the United States.

§ 7. "Person" or "persons" defined

The word "person" or "persons", wherever used in sections 1 to 7 of this title shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

§ 8. Trusts in restraint of import trade illegal; penalty.

Every combination, conspiracy, trust, agreement, or contract is declared to be contrary to public policy, illegal, and void when the same is made by or between two or more persons or corporations, either of whom, as agent or principal, is engaged in importing any article from any foreign country into the United States, and when such combination, conspiracy, trust, agreement, or contract is intended to operate in restraint of lawful trade, or free competition in lawful trade or commerce, or to increase the market price in any part of the United States of any article or articles imported or intended to

be imported into the United States, or of any manufacture into which such imported article enters or is intended to enter. Every person who shall be engaged in the importation of goods or any commodity from any foreign country in violation of this section, or who shall combine or conspire with another to violate the same, is guilty of a misdemeanor, and on conviction thereof in any court of the United States such person shall be fined in a sum not less than $100 and not exceeding $5,000, and shall be further punished by imprisonment, in the discretion of the court for a term not less than three months nor exceeding twelve months.

§ 9. Jurisdiction of courts; duty of United States attorneys; procedure.

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of section 8 of this title; and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petitions setting forth the case and praying that such violations shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be determined just in the premises.

§ 10. Bringing in additional parties

Whenever is shall appear to the court before which any proceeding under section 9 of this title may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

§ 11. Forfeiture of property in transit

Amy property owned under any contract or by any combination, or pursuant to any conspiracy, and being the subject thereof, mentioned in section 8 of this title, imported into and being within the United States or being in the course of transportation from one State to another, or to or from a Territory or the District of Columbia, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

§ 12. Definitions; short title.

(a) "Antitrust laws," as used herein, includes the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety; sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen; and also this Act.

"Commerce," as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this Act contained shall apply to the Philippine Islands.

The word "person" or "persons" wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

(b) This act may be cited as the "Clayton Act".

§ 13. Discrimination in price, services, or facilities

(a) Price; selection of customers

It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided*, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: *Provided, however*, That the Federal Trade Commission may, after due investigation and hearing to all interested parties, fix and establish quantity limits, and revise the same as it finds necessary, as to particular commodities or classes of commodities, where it finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce; and the foregoing shall then not be construed to permit differentials based on differences in quantities greater than those so fixed and established: *And provided further*, That nothing herein

contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade: *And provided further*, That nothing herein contained shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) Burden of rebutting prima-facie case of discrimination

Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima-facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: *Provided, however*, That nothing herein contained shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

(c) Payment or acceptance of commission, brokerage, or other compensation

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or

indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(d) Payment for services or facilities processing or sale

It shall be unlawful for any person engaged in commerce to pay or contact for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(e) Furnishing services or facilities for processing, handling, etc.

It shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(f) Knowingly inducing or receiving discriminatory price

It shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this section.

§ 13a. Discrimination in rebates, discounts, or advertising service charges; underselling in particular localities; penalties

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to be a party to, or assist in, any transaction of sale, or contract to sell, which discriminates

to his knowledge against competitors of the purchaser, in that, any discount, rebate, allowance, or advertising service charge is granted to the purchaser over and above any discount, rebate, allowance, or advertising service charge available at the time of such transaction to said competitors in respect of a sale of goods of like grade, quality, and quantity; to sell, or contract to sell, goods in any part of the United States at prices lower than those exacted by said person elsewhere in the United States for the purpose of destroying competition, or eliminating a competitor in such part of the United States; or to sell, or contract to sell, goods at unreasonably low prices for the purposes of destroying competition or eliminating a competitor.

Any person violating any of the provisions of this section shall, upon conviction thereof, be fined not more than $5,000 or imprisoned not more than one year, or both.

§ 13b. Cooperative association; return of net earnings or surplus

Nothing in this Act shall prevent a cooperative association from returning to its members, producers, or consumers the whole, or any part of, the net earnings or surplus resulting from its trading operations, in proportion to their purchasers or sales from, to, or through the association.

§ 13c. Exemption of non-profit institutions from price discrimination provisions

Nothing in the Act approved June 19, 1936, known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit.

§ 14. Sale, etc., on agreement not to use goods of competitor

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the United

States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

§ 15. Suits by persons injured

(a) Amount of recovery; prejudgment interest

Except as provided in subsection (b) of this section, any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee. The court may award under this section, pursuant to a motion by such person promptly made, simple interest on actual damages for the period beginning on the date of service of such person's pleading setting forth a claim under the antitrust laws and ending on the date of judgement, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this section for any period is just in the circumstances, the court shall consider only-

(1) whether such person or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking merit as to show that such party or representative acted intentionally for delay, or otherwise acted in bad faith;

(2) whether, in the course of the action involved, such person or the opposing party, or either party's representative, violated any applicable rule, statute, or

court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings; and

(3) whether such person or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

(b) Amount of Damages payable to foreign states and instrumentalities of foreign states

(1) Except as provided in paragraph (2), any person who is a foreign state may not recover under subsection (a) of this section an amount in excess of the actual damages sustained by it and the cost of suit, including a reasonable attorney's fee.

(2) Paragraph (1) shall not apply to a foreign state if-

(A) such foreign state would be denied, under section 1605(a)(2) of title 28, immunity in a case in which the action is based upon a commercial activity, or an act, that is the subject matter of its claim under this section;

(B) such foreign state waives all defenses based upon or arising out of its status as a foreign state, to any claims brought against it in the same action;

(C) such foreign state engages primarily in commercial activities; and

(D) such foreign state does not function, with respect to the commercial activity, or the act, that is the subject matter of its claim under this section as a procurement entity for itself or for another foreign state.

(c) Definitions

For the purposes of this section-

(1) the term "commercial activity" shall have the meaning given it in section 1603(d) of title 28, and

(2) the term "foreign state" shall have the meaning given it in section 1603(a) of title 28.

§ 15a. Suits by United States; amount of recovery; prejudgment interest

Whenever the United States is hereafter injured in its business or property by reason of anything forbidden in the antitrust laws it may sue therefor in the United States district court for the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by it sustained and the cost of suit. The court may award under this section, pursuant to a motion by the United States promptly made, simple interest on actual damages for the period beginning on the date of service of the pleading of the United States setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this section for any period is just in the circumstances, the court shall consider only-

(1) whether the United States or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking merit as to show that such party or representative acted intentionally for delay or otherwise acted in bad faith;

(2) whether, in the course of the action involved, the United States or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings;

(3) whether the United States or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof; and

(4) whether the award of such interest is necessary to compensate the United States adequately for the injury sustained by the United States.

§ 15b. Limitation of actions

Any action to enforce any cause of action under section 15, 15a, or 15c of this title shall be forever barred unless

commenced within four years after the cause of action accrued. No cause of action barred under existing law on the effective date of this Act shall be revived by this Act.

§ 15c. Actions by State attorneys general
(a) Parens patriae; monetary relief; damages; prejudgement interest

(1) Any attorney general of a State may bring a civil action in the name of such State, as parens patriae on behalf of natural persons residing in such State, in any district court of the United States having jurisdiction of the defendant, to secure monetary relief as provided in this section for injury sustained by such natural persons to their property by reason of any violation of sections 1 to 7 of this title. The court shall exclude from the amount of monetary relief awarded in such action any amount of monetary relief (A) which duplicates amounts which have been awarded for the same injury, or (B) which is properly allocable to (i) natural persons who have excluded their claims pursuant to subscetion (b)(2) of this section, and (ii) any business entity.

(2) The court shall award the State as monetary relief threefold the total damage sustained as described in paragraph (1) of this subsection, and the cost of suit, including a reasonable attorney's fee. The court may award under this paragraph, pursuant to a motion by such State promptly made, simple interest on the total damage for the period beginning on the date of service of such State's pleading setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest is just in the circumstances, the court shall consider only-

(A) whether such State or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking merit as to show that such party or representative acted intentionally for delay or otherwise acted in bad faith;

(B) whether, in the course of the action involved, such State or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or other wise providing for expeditious proceedings; and

(C) whether such State or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

(b) Notice; exclusion election; final judgment

(1) In any action brought under subsection (a)(1) of this section, the State attorney general shall, at such times, in such manner, and with such content as the court may direct, cause notice thereof to be given by publication. If the court finds that notice given solely by publication would deny due process of law to any person or persons, the court may direct further notice to such person or persons according to the circumstance of the case.

(2) Any person on whose behalf an action is brought under subsection (a)(1) of this section may elect to exclude from adjudication the portion of the State claim for monetary relief attributable to him by filing notice of such election with the court within such time as specified in the notice given pursuant to paragraph (1) of this subsection.

(3) The final judgment in an action under subsection (a)(1) of this section shall be res judicata as to any claim under section 15 of this title by any person on behalf of whom such action was brought and who fails to give such notice within the period specified in the notice given pursuant to paragraph (1) of this subsection.

(c) Dismissal or compromise of action

An action under subsection (a)(1) of this section shall not be dismissed or compromised without the approval of the court, and notice of any proposed dismissal or compromise shall be given in such manner as the court directs.

(d) Attorney's fees

In an action under subsection (a) of this section-

(1) the amount of the plaintiff's attorneys' fee, if any, shall be determined by the court; and

(2) the court may, in its discretion, award a reasonable attorney's fee to a prevailing defendant upon a finding that the State attorney general has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.

§ 15d. Measurement of damages

In any action under section 15c(a)(1) of this title, in which there has been a determination that a defendant agreed to fix prices in violation of sections 1 to 7 of this title, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges, or by such other reasonable system of estimating aggregate damage as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought.

§ 15e. Distribution of damages

Monetary relief recovered in an action under section 15c(a)(1) of this title shall-

(1) be distributed in such manner as the district court in its discretion may authorize; or

(2) be deemed a civil penalty by the court and deposited with the State as general revenues;

subject in either case to the requirement that any distribution procedure adopted afford each person a reasonable opportunity to secure his appropriate portion of the net monetary relief.

§ 15f. Actions by Attorney General

(a) Notification to State attorney general

Whenever the Attorney General of the United States has brought an action under the antitrust laws, and he has reason to believe that any State attorney general would be entitled to bring an action under this Act based substantially on the same

alleged violation of the antitrust laws, he shall promptly give written notification thereof to such State attorney general.

(b) Availability of files an other materials

To assist a State attorney general in evaluating the notice or in bringing any action under this Act, the Attorney General of the United States shall, upon request by such State attorney general, make available to him, to the extent permitted by law, any investigative files or other materials which are or may be relevant or materials to the actual or potential cause of action under this Act.

§ 15g. Definitions

For the purposes of section 15c, 15d, 15e, and 15f of this title:

(1) The term "State attorney general" means the chief legal officer of a State, or any other person authorized by State law to bring actions under section 15c of this title, and includes the Corporation Counsel of the District of Columbia, except that such term does not include any person employed or retained on-

(A) a contingency fee based on a percentage of the monetary relief awarded under this section; or

(B) any other contingency fee basis, unless the amount of the award of a reasonable attorney's fee to a prevailing plaintiff is determined by the court under section 15c(d)(1) of this title.

(2) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

(3) The term "natural persons" does not include proprietorships or partnerships.

§ 15h. Applicability of parens patriae actions

Sections 15c, 15d, 15e, 15f, and 15g of this title shall apply in any State, unless such State provides by law for its nonapplicability in such State.

§ 16. Judgments

(a) Prima facie evidence; collateral estoppel

A final judgment or decree heretofore or hereafter rendered in any civil or criminal proceeding brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any action or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgments or decree would be an estoppel as between the parties thereto: *Provided,* That this section shall not apply to consent judgments or decrees entered before any testimony has been taken. Nothing contained in this section shall be construed to impose any limitation on the applicability of collateral estoppel, except that, in any action or proceeding brought under the antitrust laws, collateral estoppel effect shall not be given to any finding made by the Federal Trade Commission under the antitrust laws or under section 45 of this title which could give rise to a claim for relief under the antitrust laws.

(b) Consent judgments and competitive impact statements; publication in the Federal Register; availability of copies to the public

Any proposal for a consent judgment submitted by the United States for entry in any civil proceedings brought by or on behalf of the United States under the antitrust laws shall be filed with the district court before which such proceeding is pending and published by the United States in the Federal Register at least 60 days prior to the effective date of such judgment. Any written comments relating to such proposal and any responses by the United States thereto, shall also be filed with such district court and published by the United States in the Federal Register within such sixty-day period. Copies of such proposal and any other materials and documents which the United States considered determinative in formulating such proposal, shall also be made available to the public at the district court and in such other districts as the court may subsequently direct. Simultaneously with the filing of such proposal, unless otherwise instructed by the court, the

United States shall file with the district court, publish in the Federal Register, and thereafter furnish to any person upon request, a competitive impact statement which shall recite-

(1) the nature and purpose of the proceeding;

(2) a description of the practices or events giving rise to the alleged violation of the antitrust laws;

(3) an explanation of the proposal for a consent judgment, including an explanation of any unusual circumstances giving rise to such proposal or any provision contained therein, relief to be obtained thereby, and the anticipated effects on competition of such relief;

(4) the remedies available to potential private plaintiffs damaged by the alleged violation in the event that such proposal for the consent judgment is entered in such proceeding;

(5) a description of the procedures available for modification of such proposal; and

(6) a description and evaluation of alternatives to such proposal actually considered by the United States.

(c) Publication of summaries in newspapers

The United States shall also cause to be published, commencing at least 60 days prior to the effective date of the judgment described in subsection (b) of this section, for 7 days over a period of 2 weeks in newspapers of general circulation of the district in which the case has been filed, in the District of Columbia, and in such other districts as the court may direct-

(i) a summary of the terms of the proposal for consent judgment,

(ii) a summary of the competitive impact statement filed under subsection (b) of this section,

(iii) and a list of the materials and documents under subsection (b) of this section which the United States shall make available for purposes of meaningful public comment, and the place where such materials and documents are available for public inspection.

(d) Consideration of public comments by Attorney General and publication of response

During the 60-day period as specified in subsection (b) of this section, and such additional time as the United States may request and the court may grant, the United States shall receive and consider any written comments relating to the proposal for the consent judgment submitted under subsection (b) of this section. The Attorney General or his designee shall establish procedures to carry out the provisions of this subsection, but such 60-day time period shall not be shortened except by order of the district court upon a showing that (1) extraordinary circumstances require such shortening and (2) such shortening is not adverse to the public interest. At the close of the period during which such comments may be received, the United States shall file with the district court and cause to be published in the Federal Register a response to such comments.

(e) Public interest determination

Before entering any consent judgment proposed by the United States under this section, the court shall determine that the entry of such judgment is in the public interest. For the purpose of such determination, the court may consider-

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

(f) Procedure for public interest determination

In making its determination under subsection (e) of this section, the court may-

(1) take testimony of Government officials or experts or such other expert witnesses, upon motion of any party or participant or upon its own motion, as the court may deem appropriate;

(2) appoint a special master and such outside consultants or expert witnesses as the court may deem appropriate; and request and obtain the views, evaluations, or advice of any individual, group or agency of government with respect to any aspects of the proposed judgment or the effect of such judgment, in such manner as the court deems appropriate;

(3) authorize full or limited participation in proceedings before the court by interested persons or agencies, including appearance amicus curiae, intervention as a party pursuant to the Federal Rules of Civil Procedure, examination of witnesses or documentary materials, or participation in any other manner and extent which serves the public interest as the court may deem appropriate;

(4) review any comments including any objections filed with the United States under subsection (d) of this section concerning the proposed judgment and the responses of the United States to such comments and objections; and

(5) take such other action in the public interest as the court may deem appropriate.

(g) Filing of written or oral communications with the district court

Not later than 10 days following the date of the filing of any proposal for a consent judgment under subsection (b) of this section, each defendant shall file with the district court a description of any and all written or oral communications by or on behalf of such defendant, including any and all written or oral communications on behalf of such defendant, or other person, with any officer or employee of the United States concerning or relevant to such proposal, except that any such communications made by counsel of record alone with the Attorney General or the employees of the Department of Justice alone shall be excluded from the requirements of this subsection. Prior to the entry of any consent judgment

pursuant to the antitrust laws, each defendant shall certify to the district court that the requirements of this subsection have been complied with and that such filing is a true and complete description of such communications known to the defendant or which the defendant reasonably should have known.

(h) Inadmissibility as evidence of proceedings before the district court and the competitive impact statement

Proceedings before the district court under subsections (e) and (f) of this section, and the competitive impact statement filed under subsection (b) of this section, shall not be admissible against any defendant in any action or proceeding brought by any other party against such defendant under the antitrust laws or by the United States under section 15a of this title nor constitute a basis for the introduction of the consent judgment as prima facie evidence against such defendant in any such action or proceeding.

(i) Suspension of limitations

Whenever any civil or criminal proceeding is instituted by the United States to prevent, restrain, or punish violations of any of the antitrust laws, but not including an action under sections 15a of this title, the running of the statute of limitations in respect to every private or State right of action arising under said laws and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof and for one year thereafter: *Provided, however,* That whenever the running of the statute of limitations in respect of a cause of action arising under section 15 or 15c of this title is suspended hereunder, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within four years after the cause of action accrued.

§ 17. Antitrust laws not applicable to labor organizations

The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the

purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

§ 18. Acquisition by one corporation of stock of another

No person engaged in commerce or in any activity affecting commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another person engaged also in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

No person shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more persons engaged in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or to tend to create a monopoly.

This section shall not apply to persons purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce or in any activity affecting commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning

and holding all or part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to effect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal be the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the Secretary of Transportation, Federal Communications Commission, Federal Power Commission, Interstate Commerce Commission, the Securities and Exchange Commission in the exercise of its jurisdiction under section 79j of this title, the United States Maritime Commission, or the Secretary of Agriculture under any statutory provision vesting such power in such Commission or Secretary.

§ 18a. Premerger notification and waiting period

(a) Filing

Except as exempted pursuant to subsection (c) of this section, no person shall acquire, directly or indirectly, any voting securities or assets of any other person, unless both persons (or in the case of a tender offer, the acquiring person) file notification pursuant to rules under subsection (d)(1) of this section and the waiting period described in subsection (b)(1) of this section has expired, if-

(1) the acquiring person, or the person whose voting securities or assets are being acquired, is engaged in commerce or in any activity affecting commerce;

(2) (A) any voting securities or assets of a person engaged in manufacturing which has annual net sales or total assets of $10,000,000 or more are being acquired by any person which has total assets or annual net sales of $1000,000,000 or more;

(B) any voting securities or assets of a person not engaged in manufacturing which has total assets of $10,000,000 or more are being acquired by any person which has total assets or annual net sales of $100,000,000 or more; or

(C) any voting securities or assets of a person with annual net sales or total assets of $100,000,000 or more are being acquired by any person with total assets or annual net sales of $10,000,000 or more; and

(3) as a result of such acquisition, the acquiring person would hold-

(A) 15 per centum or more of the voting securities or assets of the acquired person, or

(B) an aggregate total amount of the voting securities and assets of the acquired person in excess of $15,000,000.

In the case of a tender offer, the person whose voting securities are sought to be acquired by a person required to file notification under this subsection shall file notification pursuant to rules under subsection (d) of this section.

(b) Waiting period; publication; voting securities

(1) The waiting period required under subsection (a) of this section shall-

(A) begin on the date of the receipt by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereinafter referred to in this section as the "Assistant Attorney General") of-

(i) the completed notification required under subsection (a) of this section, or

(ii) if such notification is not completed, the notification to the extent completed and a statement of the reasons for such noncompliance,

from both persons, or, in the case of a tender offer, the acquiring person; and

(B) end on the thirtieth day after the date of such receipt (or in the case of a cash tender offer, the fifteenth day), or on such later date as may be set under subsection (e)(2) or (g)(2) of this section.

(2) The Federal Trade Commission and the Assistant Attorney General may, in individual cases, terminate the waiting period specified in paragraph (1) and allow any person to proceed with any acquisition subject to this section, and promptly shall cause to be published in the Federal Register a notice that neither intends to take any action within such period with respect to such acquisition.

(3) As used in this section-

(A) The term "voting securities" means any securities which at present or upon conversion entitle the owner or holder thereof to vote for the election of directors of the issuer or, with respect to unincorporated issuers, persons exercising similar functions.

(B) The amount or percentage of voting securities or assets of a person which are acquired or held by another person shall be determined by aggregating the amount or percentage of such voting securities or assets held or acquired by such other person and each affiliate thereof.

(c) Exempt transactions

The following classes of transactions are exempt from the requirements of this section-

(1) acquisitions of goods or realty transferred in the ordinary course of business;

(2) acquisitions of bonds, mortgages, deeds of trust, or other obligations which are not voting securities;

(3) acquisitions of voting securities of an issuer at least 50 per centum of the voting securities of which are owned by the acquiring person prior to such acquisition;

(4) transfers to or from a Federal agency or a State or political subdivision thereof;

(5) transactions specifically exempted from the antitrust laws by Federal statute;

(6) transactions specifically exempted from the antitrust laws by Federal statute if approved by a Federal agency, if copies of all information and documentary material filed with such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General;

(7) transactions which require agency approval under section 1467a(e) of title 12, section 1828(c) of title 12, or section 1842 of title 12;

(8) transactions which require agency approval under section 1843 of title 12 or section 1464 of title 12, if copies of all information and documentary material filed with any such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General at least 30 days prior to consummation of the proposed transaction;

(9) acquisitions, solely for the purpose of investment, of voting securities, if, as a result of such acquisition, the securities acquired or held do not exceed 10 per centum of the outstanding voting securities of the issuer;

(10) acquisitions of voting securities, if, as a result of such acquisition, the voting securities acquired do not increase, directly or indirectly, the acquiring person's per centum share of outstanding voting securities of the issuer;

(11) acquisitions, solely for the purpose of investment, by any bank, banking association, trust company, investment company, or insurance company, of (A) voting securities pursuant to a plan of reorganization or dissolution; or (B) assets in the ordinary course of its business; and

(12) such other acquisitions, transfers, or transactions, as may be exempted under subsection (d)(2)(B) of this section.

(d) Commission rules

The Federal Trade Commission, with the concurrence of the Assistant Attorney General and by rule in accordance with section 553 of title 5, consistent with the purposes of this section-

(1) shall require that the notification required under subsection (a) of this section be in such form and contain such documentary material and information relevant to a proposed acquisition as is necessary and appropriate to enable the Federal Trade Commission and the Assistant Attorney General to determine whether such acquisition may, if consummated, violate the antitrust laws; and

(2) may-

(A) define the terms used in this section;

(B) exempt, from the requirements of this section, classes of persons, acquisitions, transfers, or transactions which are not likely to violate the antitrust laws; and

(C) prescribe such other rules as may be necessary and appropriate to carry out the purposes of this section.

(e) Additional information; waiting period extensions

(1) The Federal Trade Commission or the Assistant Attorney General may, prior to the expiration of the 30-day waiting period (or in the case of a tender offer, the 15-day waiting period) specified in subsection (b)(1) of this section, require the submission of additional information or documentary material relevant to the proposed acquisition, from a person required to file notification with respect to such acquisition under subsection (a) of this section prior to the

expiration of the waiting period specified in subsection (b)(1) of this section, or from any officer, director, partner, agent, or employee of such person.

(2) The Federal Trade Commission or the Assistant Attorney General, in its or his discretion, may extend the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period) specified in subsection (b)(1) of this section for an additional period of not more than 20 days (or in the case of a cash tender offer, 10 days) after the date on which the Federal Trade Commission or the Assistant Attorney General, as the case may be, receives from any person to whom a request is made under paragraph (1), or in the case of tender offers, the acquiring person, (A) all the information and documentary material required to be submitted pursuant to such a request, or (B) if such request is not fully complied with, the information and documentary material submitted and a statement of the reasons for such noncompliance. Such additional period may be further extended only be the United States district court, upon an application by the Federal Trade Commission or the Assistant Attorney General pursuant to subsection (g)(2) of this section.

(f) Preliminary injunctions; hearings

If a proceeding is instituted or an action is filed by the Federal Trade Commission, alleging that a proposed acquisition violates section 18 of this title, or section 45 of this title, or an action is filed by the United States, alleging that a proposed acquisition violates such section 18 of this title, or sections 1 or 2 of this title, and the Federal Trade Commission or the Assistant Attorney General (1) files a motion for a preliminary injunction against consummation of such acquisition pendente lite, and (2) certifies the United States district court for the judicial district within which the respondent resides or carries on business, or in which the action is brought, that it or he believes that the public interest requires relief pendente lite pursuant to this subsection, then upon the filing of such motion and certification, the chief judge of such district court shall immediately notify the chief judge of the United States court of appeals for the circuit in

which such district court is located, who shall designate a United States district judge to whom such action shall be assigned for all purposes.

(g) Civil penalty; compliance; power of court

(1) Any person, or any officer, director, or partner thereof, who fails to comply with any provision of this section shall be liable to the United States for a civil penalty of not more than $10,000 for each day during which such person is in violation of this section. Such penalty may be recovered in a civil action brought by the United States.

(2) If any person, or any officer, director, partner, agent, or employee thereof, fails substantially to comply with the notification requirement under subsection (a) of this section or any request for the submission of additional information or documentary material under subsection (e)(1) of this section within the waiting period specified in subsection (b)(1) of this section and as may be extended under subsection (e)(2) of this section, the United States district court-

(A) may order compliance;

(B) shall extend the waiting period specified in subsection (b)(1) of this section and as may have been extended under subsection (e)(2) of this section until there has been substantial compliance, except that, in the case of a tender offer, the court may not extend such waiting period on the basis of a failure, by the person whose stock is sought to be acquired, to comply substantially with such notification requirement or any such request; and

(C) may grant such other equitable relief as the court in its discretion determined necessary or appropriate,

upon application of the Federal Trade Commission or the Assistant Attorney General.

(h) Disclosure exemption

Any information or documentary material filed with the Assistant Attorney general or the Federal Trade Commission pursuant to this section shall be exempt from disclosure under section 552 of title 5, and no such information or documentary material may be made public, except as may be relevant to

any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

(i) Construction with other laws

(1) Any action taken by the Federal Trade Commission or the Assistant Attorney General or any failure of the Federal Trade Commission or the Assistant Attorney General to take any action under this section shall not bar any proceeding or any action with respect to such acquisition at any time under any other section of this Act or any other provision of law.

(2) Nothing contained in this section shall limit the authority of the Assistant Attorney General or the Federal Trade Commission to secure at any time from any person documentary material, oral testimony, or other information under the Antitrust Civil Process Act [15 U.S.C. 1311 et seq.], the Federal Trade Commission Act [15 U.S.C. 41 et seq.], or any other provision of law.

(j) Report to Congress; legislative recommendations

Beginning not later than January 1, 1978, the Federal Trade Commission, with the concurrence of the Assistant Attorney General, shall annually report to the Congress on the operation of this section. Such report shall include an assessment of the effects of this section, of the effects, purpose, and need for any rules promulgated pursuant thereto, and any recommendations for revisions of this section.

§ 19. Interlocking directorates and officers

(a)(1) No person shall, at the same time, serve as a director or officer in any two corporations (other than banks, banking associations, and trust companies) that are-

(A) engaged in whole or in part in commerce; and

(B) by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the antitrust laws;

if each of the corporations has capital, surplus, and undivided profits aggregating more than $10,000,000 as adjusted pursuant to paragraph (5) of this subsection.

(2) Notwithstanding the provisions of paragraph (1), simultaneous service as a director or officer in any two corporations shall not be prohibited by this section if-

(A) the competitive sales of either corporation are less than $1,000,000, as adjusted pursuant to paragraph (5) of this subsection;

(B) the competitive sales of either corporation are less than 2 per centum of that corporations total sales; or

(C) the competitive sales of each corporati n are less than 4 per centum of that corporations total sales.

For purposes of this paragraph, "competitive sales" means the gross revenues for all products and services sold by one corporation in competition with the other, determined on the basis of annual gross revenues for such products and services in that corporation's last completed fiscal year. For the purposes of this paragraph, "total sales" means the gross revenues for all products and services sold by one corporation over that corporation's last completed fiscal year.

(3) The eligibility of a director or officer under the provisions of paragraph (1) shall be determined by the capital, surplus and undivided profits, exclusive of dividends declared but not paid to stockholders, of each corporation at the end of that corporation's last completed fiscal year.

(4) For the purposes of this section, the term "officer" means an officer elected or chosen by the Board of Directors.

(5) For each fiscal year commencing after September 30, 1990, the $10,000,000 and $1,000,000 thresholds in this subsection shall be increased (or decreased) as of October 1 each year by an amount equal to the percentage increase (or decrease) in the gross national product, as determined by the Department of Commerce or its successor, for the year then ended over the level so established for the year ending September 30, 1989. As soon as practicable, but not later than January 31 of each year, the Federal Trade Commission shall publish the adjusted amounts required by this paragraph.

(b) When any person elected or chosen as a director or officer of any corporation subject to the provisions hereof is eligible at the time of his election or selection to act for such corporation in such capacity, his eligibility to act in such capacity shall not be affected by any of the provisions hereof by reason of any change in the capital, surplus and undivided profits, or affairs of such corporation from whatever cause, until the expiration of one year from the date on which the event causing ineligibility occurred.

§ 19a. Repealed. Aug. 23, 1935, ch. 614, § 329, 49 Stat. 717

§ 20. Repealed. Pub. L. 101-588, § 3, Nov. 16, 1990, 104 Stat. 2880

§ 21. Enforcement provisions

(a) Commission, Board, or Secretary authorized to enforce compliance

Authority to enforce compliance with sections 13, 14, 18, and 19 of this title by the persons respectively subject thereto is vested in the Interstate Commerce Commission where applicable to common carriers subject to subtitle IV of title 49; in the Federal Communications Commission where applicable to common carriers engaged in wire or radio communication or radio transmission of energy; in the Secretary of Transportation where applicable to air carriers and foreign air carriers subject to part A of subtitle VII of title 49; in the Board of Governors of the Federal Reserve System where applicable to banks, banking associations, and trust companies; and in the Federal Trade Commission where applicable to all other character of commerce to be exercised as follows:

(b) Issuance of complaints for violations; hearing; intervention; filing of testimony; report; cease and desist orders; reopening and alteration of reports or orders

Whenever the Commission, Board, or Secretary vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections 13, 14, 18, and 19 of this title, it shall issue and serve

upon such person and the Attorney General a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not by entered by the Commission, Board, or Secretary requiring such person to cease and desist from the violation of the law so charged in said complaint. The Attorney General shall have the right to intervene and appear in said proceeding and any person may make application, and upon good cause shown may be allowed by the Commission, Board, or Secretary, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission, Board, or Secretary. If upon such hearing the Commission, Board, or Secretary, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing, in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock, or other share capital, or assets, held or rid itself of the directors chosen contrary to the provisions of sections 18 and 19 of this title, if any there be, in the manner and within the time fixed by said order. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission, Board, or Secretary may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission, Board, or Secretary may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any report or

order made or issued by it under this section, whenever in the opinion of the Commission, Board, or Secretary conditions of fact or of law have so changed as to require such action or if the public interest shall so require: *Provided, however,* That the said person may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate court of appeals of the United States, in the manner provided in subsection (c) of this section.

(c) Review of orders; jurisdiction; filing of petition and record of proceeding; conclusiveness of findings; additional evidence; modifications of findings; finality of judgment and decree

Any person required by such order of the commission, board, or Secretary to cease and desist from any such violation may obtain a review of such order in the court of appeals of the United States for any circuit within which such violation occurred or within which such person resides or carries on business, by filing in the court, within sixty days after the date of the service of such order, a written petition praying that the order of the commission, board, or Secretary be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the commission, board, or Secretary, and thereupon the commission, board, or Secretary shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon such filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein concurrently with the commission, board, or Secretary until the filing of the record, and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the commission, board, or Secretary, and enforcing the same to the extent that such order is affirmed, and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite. The findings of the commission, board, or Secretary as to the facts, if supported by substantial evidence, shall be conclusive. To the extent that the order of the commission, board, or Secretary is affirmed, the court shall

issue its own order commanding obedience to the terms of such order of the commission, board, or Secretary. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, board, or Secretary, the court may order such additional evidence to be taken before the commission, board, or Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission, board, or Secretary may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and shall file such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgement and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28.

(d) Exclusive jurisdiction of Court of Appeals

Upon the filing of the record with its jurisdiction of the court of appeals to affirm, enforce, modify, or set aside orders of the commission, board, or Secretary shall be exclusive.

(e) Liability under antitrust laws

No order of the commission, board, or Secretary or judgment of the court to enforce the same shall in anywise relieve or absolve any person from any liability under the antitrust laws.

(f) Service of complaints, orders and other processes

Complaints, orders, and other processes of the commission, board, or Secretary under this section may be serviced by anyone duly authorized by the commission, board, or Secretary, either (1) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a

director of the corporation to be served; or (2) by leaving a copy thereof at the residence or the principal office or place of business of such person; or (3) by mailing by registered or certified mail a copy thereof addressed to such person at his or its residence or principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt for said complaint, order, or other process mailed by registered or certified mail as aforesaid shall be proof of service of the same.

(g) Finality of orders generally

Any order issued under subsection (b) of this section shall become final-

(1) upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; but the commission, board, or Secretary may thereafter modify or set aside its order to the extent provided in the last sentence of subsection (b) of this section; or

(2) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the commission, board, or Secretary has been affirmed, or the petition for review has been dismissed by the court of appeals, and no petition for certiorari has been duly filed; or

(3) upon the denial of a petition for certiorari, if the order of the commission, board, or Secretary has been affirmed or the petition for review has been dismissed by the court of appeals; or

(4) upon the expiration of thirty days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the order of the commission, board, or Secretary be affirmed or the petition for review be dismissed.

(h) Finality of orders modified by Supreme Court

If the Supreme Court directs that the order of the commission, board, or Secretary be modified or set aside, the

order of the commission, board, or Secretary rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of thirty days from the time it was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the commission, board, or Secretary shall become final when so corrected.

(i) Finality of orders modified by Court of Appeals

If the order of the commission, board, or Secretary is modified or set aside by the court of appeals, and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court then the order of the commission, board, or Secretary rendered in accordance with the mandate of the court of appeals shall become final on the expiration of thirty days from the time of such order of the commission, board, or Secretary was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the commission, board, or Secretary shall become final when so corrected.

(j) Finality of orders issued on rehearing ordered by Court of Appeals or Supreme Court

If the Supreme Court orders a rehearing; or if the case is remanded by the court of appeals to the commission, board, or Secretary for a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the commission, board, or Secretary rendered upon such rehearing shall become final in the same manner as though no prior order of the commission, board, or Secretary had been rendered.

(k) "Mandate" defined

As used in this section the term "mandate", in case a mandate has been recalled prior to the expiration of thirty days from the date of issuance thereof, means the final mandate.

(l) Penalties

Any person who violates any order issued by the commission, board, or Secretary under subsection (b) of this section after such order has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than $5,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the United States. Each separate violation of any such order shall be a separate offense, except that in the case of a violation through continuing failure or neglect to obey a final order of the commission, board, or Secretary each day of continuance of such failure or neglect shall be deemed a separate offense.

§ 21a. Actions and proceedings pending prior to June 19, 1936; additional and continuing violations

Nothing herein contained shall effect rights of action arising, or litigation pending, or orders of the Federal Trade Commission issued and in effect or pending on review, based on section 13 of this title, prior to June 19, 1936: *Provided*, That where, prior to June 19, 1936, the Federal Trade Commission has issued an order requiring any person to cease and desist from a violation of section 13 of this title, and such order is pending on review or is in effect, either as issued or as affirmed or modified by a court of competent jurisdiction, and the Commission shall have reason to believe that such person has committed, used or carried on, since June 19, 1936, or is committing, using or carrying on, any act, practice or method in violation of any of the provisions of said section 13 of this title , it may reopen such original proceedings and may issue and serve upon such person its complaint, supplementary to the original complaint, stating its charges in that respect. Thereupon the same proceedings shall be had upon such

supplementary complaint as provided in section 21 of this title. If upon such hearing the Commission shall be of the opinion that any act, practice, or method charged in said supplementary complaint has been committed, used, or carried on since June 19, 1936, or is being committed, used or carried on, in violation of said section 13 of this title, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and serve upon such persons its order modifying or amending its original order to include any additional violations of law so found. Thereafter the provisions of section 21 of this title, as to review and enforcement of orders of the Commission shall in all things apply to such modified or amended order. If upon review as provided in section 21 of this title the court shall set aside such modified or amended order, the original order shall not be affected thereby, but it shall be and remain in force and effect as fully and to the same extent as if such supplementary proceedings had not been taken.

§ 22. District in which to sue corporation

Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

§ 23. Suits by United States; subponeas for witnesses

In any suit, action, or proceeding brought by or on behalf of the United States subponeas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or criminal, arising under the antitrust laws may run into any other district: *Provided,* That in civil cases no writ of subponea shall issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the permission of the trial court being first had upon proper application and cause shown.

§ 24. Liability of directors and agents of corporation

Whenever a corporation shall violate any of the penal provisions of the antitrust laws, such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation, and such violation shall be deemed a misdemeanor, and upon conviction thereof of any such director, officer, or agent he shall be punished by a fine not exceeding $5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court.

§ 25. Restraining violations; procedure

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the district in which the court is held or not, and subponeas to that end may be served in any district by the marshal thereof.

§ 26. Injunctive relief for private parties; exception; costs

Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws,

including sections 13, 14, 18, and 19 of this title, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided*, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of subtitle IV of title 49, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission. In any action under this section in which the plaintiff substantially prevails, the court shall award the cost of suit, including a reasonable attorney's fee, to such plaintiff.

§ 26a. Restrictions on the purchase of gasohol and synthetic motor fuel

(a) Limitations on the use of credit instruments; sales, resales, and transfers

Except as provided in subsection (b) of this section, it shall be unlawful for any person engaged in commerce, in the course of such commerce, directly or indirectly to impose any condition, restriction, agreement, or understanding that-

(1) limits the use of credit instruments in any transaction concerning the sale, resale, or transfer of gasohol or other synthetic motor fuel of equivalent usability in any case in which there is no similar limitation on transactions concerning such person's conventional motor fuel; or

(2) otherwise unreasonably discriminates against or unreasonably limits the sale, resale, or transfer of gasohol or other synthetic motor fuel of equivalent usability in any case in which such synthetic or conventional motor fuel is sold for use, consumption, or resale within the United States.

(b) Credit fees; equivalent conventional motor fuel sales; labeling of pumps; product liability disclaimers; advertising support; furnishing facilities

(1) Nothing in this section or in any other provision of law in effect on December 2, 1980, which is specifically applicable to the sale of petroleum products shall preclude any person referred to in subsection (a) of this section from imposing a reasonable fee for credit on the sale, resale, or transfer of the gasohol or other synthetic motor fuel referred to in subsection (a) of this section if such fee equals no more than the actual costs to such person of extending that credit.

(2) The prohibitions in this section shall not apply to any person who makes available sufficient supplies of gasohol and other synthetic motor fuels of equivalent usability to satisfy his customers' needs for such products, if the gasohol and other synthetic fuels are made available on terms and conditions which are equivalent to the terms and conditions on which such person's conventional motor fuel products are made available.

(3)Nothing in this section shall-

(A) preclude any person referred to in subsection (a) of this section from requiring reasonable labeling of pumps dispensing the gasohol or other synthetic motor fuel referred to in subsection (a) of this section to indicate, as appropriate, that such gasohol or other synthetic motor fuel is not manufactured, distributed, or sold by such person;

(B) preclude such person from issuing appropriate disclaimers of product liability for damage resulting from use of the gasohol or synthetic motor fuel;

(C) require such person to provide advertising support for the gasohol or other synthetic motor fuel; or

(D) require such person to furnish or provide, at such person's own expense, any additional pumps, tanks, or other related facilities required for the sale of the gasohol or other synthetic motor fuel.

(c) "United States" defined

As used in this section, "United States" includes the several States, the District of Columbia, any territory of the United States, and any insular possession or other place under the jurisdiction of the United States.

§ 27. Effect of partial invalidity

If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 28. Repealed. Pub. L. 98-620, title IV, § 402(11), Nov. 8, 1984, 98 Stat. 3358

§ 29. Appeals

(a) Court of appeals; review by Supreme Court

Except as otherwise expressly provided by this section, in every civil action brought in any district court of the United States under the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890, or any other Acts having like purpose that have been or hereafter may be enacted, in which the United States is the complainant and equitable relief is sought, any appeal from a final judgment entered in any such action shall be taken to the court of appeals pursuant to sections 1291, and 2107 of title 28. Any appeal from an interlocutory order entered in any such action shall be taken to the court of appeals pursuant to sections 1292(a)(1) and 2107 of title 28 but not otherwise. Any judgment entered by the court of appeals in any such action shall be subject to review by the Supreme Court upon a writ of certiorari as provide in section 1254 (1) of title 28.

(b) Direct appeals to Supreme Court

An appeal from a final judgment pursuant to subsection (a) of this section shall lie directly to the Supreme Court, if, upon application of a party filed within fifteen days of the filing of a notice of appeal, the district judge who adjudicated the case enters an order stating that immediate consideration of the appeal by the Supreme Court is of general public importance in the administration of justice. Such order shall be filed within thirty days after the filing of a notice of appeal. When such an order is filed, the appeal and any cross appeal shall be docketed in the time and manner prescribed by the rules of the Supreme Court. The Supreme Court shall thereupon either (1) dispose of the appeal and any cross appeal in the same manner as any other direct appeal authorized by law, or (2) in its discretion, deny the direct appeal and remand the case to the court of appeals, which then shall then have jurisdiction to hear and determine the same as if the appeal and any cross appeal therein had been docketed in the court of appeals in the first instance pursuant to subsection (a) of this section.

§ 30. Depositions for use in suits in equity; proceedings open to public

In the taking of depositions of witnesses for use in any suit in equity brought by the United States under sections 1 to 7 of this title, and in the hearings before any examiner or special master appointed to take testimony therein, the proceedings shall be open to the public as freely as are trials in open court; and no order excluding the public from attendance on any such proceedings shall be valid or enforceable.

§ 31. Panama Canal closed to violators of antitrust laws

No vessel permitted to engage in the coastwise or foreign trade of the United States shall be permitted to enter or pass through the Panama Canal if such ship is owned, chartered, operated, or controlled by any person or company which is doing business in violation of the provisions of sections 1 to 11 of this title or of any other Act of Congress amending or supplementing the same. The question of fact may be determined by the judgment of any court of the United States

of competent jurisdiction in any cause pending before it to which the owners or operators of such ship are parties. Suit may be brought by any shipper or by the Attorney General of the United States.

§ 32, 33 Repealed. Pub L. 91-452, title II, §§ 209, 210, Oct. 15, 1970, 84 Stat. 929.

§ 34. Definitions applicable to section 34 to 36

For the purposes of sections 34 to 36 of this title-

(1) the term "local government" means-

(A) a city, county, parish, town, township, village, or any other general function governmental unit established by State law, or

(B) a school district, sanitary district, or any other special function governmental unit established by State law in one or more States,

(2) the term "person" has the meaning given it in subsection (a) of the first section of the Clayton Act [15 U.S.C. 12(a)], but does not include any local government as defined in paragraph (1) of this section, and

(3) the term "State" has the meaning given it in section 4G(2) of the Clayton Act (15 U.S.C. 15g(2)).

§ 35. Recovery of damages, etc. for antitrust violations from any local government, or official or employee thereof acting in an official capacity

(a) Prohibition in general

No damages, interest on damages, costs, or attorney's fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) from any local government, or official or employee thereof acting in an official capacity.

(b) Preconditions for attachment of prohibition; prima facie evidence for nonapplication of prohibition

Subsection (a) of this section shall not apply to cases commenced before the effective date of this Act unless the defendant establishes and the court determines, in light of all of the circumstances, including the stage of litigation and the

availability of alternative relief under the Clayton Act, that it would be inequitable not to apply this subsection to a pending case. In consideration of this section, existence of a jury verdict, district court judgment, or any stage of litigation subsequent thereto, shall be deemed to be prima facie evidence that subsection (a) of this section shall not apply.

§ 36. Recovery of damages, etc., for antitrust violations on claim against person based on official action directed by local government, or official or employee thereof acting in an official capacity.

(a) Prohibition in general

No damages, interest on damages, costs or attorney's fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) in any claim against a person based on any official action directed by a local government, or official or employee thereof acting in an official capacity.

(b) Nonapplication of prohibition for cases commenced before effective date of provisions

Subsection (a) of this section shall not apply with respect to cases commenced before the effective date of this Act.

TITLE 31 CODE OF FEDERAL REGULATIONS (31 C.F.R.) PART 309- ISSUE AND SALE OF TREASURY BILLS

Sec.
309.1 Authority for issue and sale.
309.2 Description of Treasury bills (General).
309.3 Denominations and exchange.
309.4 Taxation.
309.5 Acceptance of Treasury bills for various purposes.
309.6 Public notice of offering.
309.7 Tenders; Submission through Federal Reserve Banks and branches and to the Bureau of the Public Debt.
309.8 Tenders; when cash deposit is required.
309.9 Tenders; acceptance by the Secretary of the Treasury.
309.10 Tenders; reservation of right to reject.
309.11 Tenders; payment of accepted tenders.
309.12 Relief on account of loss, theft or destruction, etc.
309.13 Function of Federal Reserve Banks.
309.14 Reservation as to terms of circular.

AUTHORITY: 80 Stat. 379; sec. 8, 50 Stat. 481, as amended; sec. 5, 40 Stat. 290 as amended; 5 U.S.C. 301; 31 U.S.C. 738a, 754.

SOURCE: 41 FR 44006, Oct. 5, 1976, unless otherwise noted.

§ 309.1 Authority for issue and sale.

The Secretary of the Treasury is authorized by the Second Liberty Bond Act, as amended, to issue Treasury bills of the United States on an interest-bearing basis, on a discount basis, or on a combination interest-bearing and discount basis, at such price or prices and with interest computed in such manner and payable at such time or times as he may prescribe; and to fix the form, terms, and conditions thereof, and to offer them for sale on a competitive or other basis, under such regulations and upon such terms and conditions as he may prescribe. Pursuant to said authorization, the

Secretary of the Treasury may, from time to time, by public notice, offer Treasury bills for sale, and invite tenders therefor, through the Federal Reserve Banks and branches and through the Department of the Treasury, Bureau of the Public Debt. The Treasury bills so offered, and the tenders made, will be subject to the terms and conditions and to the general rules and regulations herein set forth, except as they may be modified in the public notices issued by the Secretary of the Treasury in connection with particular offerings.[1]

§ 309.2 Description of Treasury bills (General).

Treasury bills are bearer obligations of the United States promising to pay a specified amount on a specified date. They will be payable at maturity upon presentation to the Bureau of the Public Debt, Washington, DC 20226, or to any Federal Reserve Bank or branch. Treasury bills are issued only by Federal Reserve Banks and branches and the Bureau of the Public Debt pursuant to tenders accepted by the Secretary of the Treasury, and shall not be valid unless the issue date and the maturity date are entered thereon. Treasury bills bearing the same issue date and the same maturity date shall constitute a series.

§ 309.3 Denominations and exchange.

Treasury bills will be issued in denominations (maturity value) of $10,000, $15,000, $50,000, $100,000, $500,000, and $1,000,000. Exchanges from higher to lower and lower to higher denominations of the same series (bearing the same issue and maturity dates) will be permitted at Federal Reserve Banks and branches and at the Bureau of the Public Debt, Washington, DC 20226. Insofar as applicable, the general regulations of the Treasury Department governing

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[1] Accordingly these regulations do not constitute a specific offering of Treasury bills.

transactions in bonds and notes will govern transactions in Treasury bills.

§ 309.4 Taxation.

The income derived from Treasury bills, whether interest or gain from the sale or other disposition of the bills, shall not have any exemption, as such, and loss from the sale or other disposition of Treasury bills shall not have any special treatment, as such, under the Internal Revenue Code, or laws amendatory or supplementary thereto. The bills shall be subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but shall be exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, or any of the possessions of the United States, or by any local taxing authority. For purposes of taxation the amount of discount at which Treasury bills are originally sold by the United States shall be considered to be interest.

§ 309.5 Acceptance of Treasury bills for various purposes.

(a) *Acceptable as security for public deposits.* Treasury bills will be acceptable at maturity value to secure deposits of public monies.

(b) *Acceptable in payment of taxes.* The Secretary of the Treasury, in his discretion, when inviting tenders for Treasury bills, may provide that Treasury bills of any series will be acceptable at maturity value, whether at or before maturity, under such rules and regulations as he shall prescribe or approve, in payment of income taxes payable under the provisions of the Internal Revenue Code. Treasury bills which by the terms of their issue are acceptable in payment of income taxes may be surrendered to any Federal Reserve Bank or Branch, acting as fiscal agent of the United States, or to the Bureau of the Public Debt, Washington, DC 20226, 15 days or less before the date on which the taxes become due.

(1) In the case of payments of corporation income taxes (including payments of estimates) for taxable years ending on or after December 31, 1967, the bills shall be accompanied by a

preinscribed Form 503, Federal Tax Deposit, Corporation Income Taxes, on which the face amount of the bills being surrendered should be entered in the space provided for the amount of the tax deposit. The office receiving the bills and Form 503 will acknowledge receipt of the bills to the owner corporation and effect the tax deposit on the date on which the taxes become due. Accordingly, in these cases, it will no longer be necessary to submit receipts for Treasury bills to the Internal Revenue Service with the corporation's declaration or tax return.

(2) In the case of payments of all other income taxes the office receiving the bills will issue receipts (in duplicate) to the owners. The original of the receipt shall be submitted, by the owner, in lieu of the bills, together with the tax return, to the District Director, Internal Revenue Service.

(c) *Discounting by Federal Reserve Bank of notes secured by Treasury bills.* Notes secured by Treasury bills are eligible for discount or rediscount at Federal Reserve Banks as provided under the provisions of section 13 of the Federal Reserve Act, as are notes secured by bonds and notes of the United States.

(d) *Acceptable in connection with foreign obligations held by United States.* Treasury bills will be acceptable at maturity, but not before, in payment of interest or of principal on account of obligations of foreign governments held by the United States.

§ 309.6 Public notice of offering.

When Treasury bills are to be offered, tenders therefor will be invited though public notice given by the Secretary of the Treasury. Such public notices may be issued by the Secretary of the Treasury in the name of "the Treasury Department" with the same force and effect as if issued in the name of the Secretary of the Treasury. In such notice there will be set forth the amount of Treasury bills for which tenders are then invited, the date of issue, the date or dates when such bills will become due and payable, the date and closing hour for the receipt of tenders at the Federal Reserve Banks and branches and at the Bureau of the Public Debt, Washington, DC 20226,

and the date on which payment for accepted tenders must be made or completed.

§ 309.7 Tenders; Submission through Federal Reserve Banks and branches and to the Bureau of the Public Debt.

Tenders in response to any such public notice will be received at the Federal Reserve Banks, or branches thereof and at the Bureau of the Public Debt, Washington, DC 20226, and unless received before the time fixed for closing will be disregarded. Each tender must be for a minimum amount of $10,000. Tenders over $10,000 must be in multiples of $5,000 (maturity value). In the case of competitive tenders the price or prices offered by the bidder for the amount or amounts (at maturity value) applied for must be stated, and must be expressed on the basis of 100, with not more that three decimals, e.g., 99.925. Fractions may not be used.

§ 309.8 Tenders; when cash deposit is required.

Tenders should be submitted on the printed forms and forwarded in the special envelopes which will be supplied on application to any Federal Reserve Bank, or Branch or to the Bureau of the Public Debt, Washington, DC 20226. If a special envelope is not available, the inscription "Tender for Treasury Bills" should be placed on the envelope used. The instructions set forth in the public notice announcing the offering should be observed with respect to the submission of tenders. Banking institutions generally may submit tenders for account of customers provided the names of the customers are set forth in such tenders. Others than banking institutions, will not be permitted to submit tenders except for their own account. Tenders from incorporated banks and trust companies, and from responsible and recognized dealers in investment securities will be received without deposit. Tenders from all others must be accompanied by a payment of such percent of the face amount of the Treasury bills applied for as the Secretary of the Treasury may from time to time prescribe: *Provided, however,* That such deposit will not be

required if the tender is accompanied by an express guaranty of payment in full by an incorporated bank or trust company. Forfeiture of the prescribed payment may be declared by the Secretary of the Treasury, if payment is not completed, in the case of accepted tenders, on the prescribed date.

§ 309.9 Tenders; acceptance by the Secretary of the Treasury.

At the time fixed for closing, as specified in the public notice, all tenders received by the Federal Reserve Banks and Branches and by the Bureau of the Public Debt will be opened. The Secretary of the Treasury will determine the acceptable prices offered and will make public announcement thereof those submitting tenders will be advised of the acceptance or rejection thereof, and payment on accepted tenders must be made or completed on the date specified in the public notice.

§ 309.10 Tenders; reservation of right to reject.

In considering the acceptance of tenders, the highest prices offered will be accepted in full down to the amount required, and if the same price appears in two or more tenders and it is necessary to accept only a part of the amount offered at such price, the amount accepted at such price will be prorated in accordance with the respective amounts applied for. However, the Secretary of the Treasury expressly reserves the right on any occasion to accept non-competitive tenders entered in accordance with the specific offerings, to reject any or all tenders or parts of tenders, and to award less than the amount applied for; and any action he may take in any such respect or respects shall be final.

§ 309.11 Tenders; payment of accepted tenders.

Settlement for accepted tenders in accordance with the bids must be made or completed at the appropriate Federal Reserve Bank or branch or at the Bureau of the Public Debt in cash or other immediately available funds on or before the date specified, except that the Secretary of the Treasury, in his

discretion, when inviting tenders for Treasury bills, may provide:

(a) That any qualified depositary may make such settlement by credit, on behalf of itself and its customers, up to any amount for which it shall be qualified in excess of existing deposits, when so notified by the Federal Reserve Bank of its District or

(b) That such settlement may be made in maturing Treasury bills accepted in exchange.

Whenever the Secretary provides for settlement in maturing Treasury bills, cash adjustments will be made for differences between the par value of the maturing bills and the issue price of the new bills.

§ 309.12 Relief on account of loss, theft or destruction, etc.

(a) Relief on account of the loss, theft, destruction, mutilation or defacement of Treasury bills may be given only under the authority of, and subject to the conditions set forth in section 8 of the act of July 8, 1937 (50 Stat. 481), as amended (31 U.S.C. 738a) and the regulations pursuant thereto in (Treasury Department Circular No. 300 insofar as applicable.

(b) In the case of loss, theft, destruction, mutilation or defacement of Treasury bills, immediate advice, with a full description of the bill or bills involved, should be sent to the Bureau of the Public Debt, Division of Securities Operations, Department of the Treasury, Washington, DC 20226, either direct or through any Federal Reserve Bank or Branch, and, if relief under the statutes may be given, instructions and necessary blank forms will be furnished.

§ 309.13 Function of Federal Reserve Banks.

Federal Reserve Banks and Branches, as fiscal agents of the United States, are authorized to perform all such acts as may be necessary to carry out the provisions of this circular and of any public notice or notices issued in connection with any offering of Treasury bills.

§ 309.14 Reservation as to terms of circular.

The Secretary of the Treasury reserves the right to further amend, supplement, revise or withdraw all or any of the provisions of this circular at any time, or from time to time.

NO WHITE-OUT OR
SIMILAR PRODUCTS
PUBLIC DEBT FORMS

FORMPDF3905REQUESTFORSECURITIESTRANSACTIONALLOWEDON

Dept. of the Treasury
Bur. Of the Public Debt
(Rev. March 1989)

NOTE.-To protect against loss, coupon securities should be forwarded by registered mail, insured.

To: ☐ **Federal Reserve Bank or Branch at** _____

☒ **Bureau of the Public Debt, Division of Customer Services, Washington, D.C. 20239-0001**

Pursuant to the provisions of Treasury Department Circular No. 300, current revision, the undersigned presents Treasury Bills (CUSIP 912795FG1) and request that they be:
(insert loan title of securities)

CHECK ONLY ONE BOX

☐ Redeemed ☐ Exchanged for Coupon Securities
☒ Exchanged for Registered Securities
☐ Transferred on the books of the Department and that new Registered Securities be issued
☐ Exchanged for an equal face amount of the same issue in the denominations indicated below

SECURITIES PRESENTED		SECURITIES TO BE ISSUED IN FOLLOWING DENOMINATION			
		DENOMINATION			
SERIAL NUMBERS	AMOUNT	NUMBER OF PIECES	NUMBER OF PIECES	AMOUNT	SERIAL NUMBERS (To be assigned by Dept. or Federal Reserve Bank.)
	$	500		$	
912795FG1	$1,000	1 1,000			
		5,000			
		10,000			
		15,000			
		100,000			
		500,000			
		1,000,000	1	$1,000,000	
	$1,000	1 ◂TOTALS▸	1	$1,000,000	

1. IF **REGISTERED** SECURITIES PRESENTED, GIVE EXACT INSCRIPTION(S) IF COUPON SECURITIES PRESENTED, GIVE NUMBER OF COUPONS ATTACHED THERETO:

Jay Nolan Renobato
Post Office Box 9771
The Woodlands, Texas. 77387

2. IF **REGISTERED** SECURITIES TO BE ISSUED, GIVE REGISTRATION, TAX PAYER IDENTIFYING NUMBER AND ADDRESS, INCLUDING ZIP CODE, FOR MAILING SECURITIES AND INTEREST CHECKS

Jay Nolan Renobato
Post Office Box 9771
The Woodlands, Texas. 77387
TIN- 463-55-1412

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3. IF SECURITIES TO BE REDEEMED, GIVE NAME AND TAXPAYER IDENTIFYING NUMBER OF PAYEE, AND ADDRESS, INCLUDING ZIP CODE, FOR DELIVERY OF REDEMPTION PROCEEDS:

4.IF **COUPON** SECURITIES TO BE ISSUED, GIVE MAILING ADDRESS, INCLUDING ZIP CODE, FOR THEIR DELIVERY:

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5. IT IS UNDERSTOOD THAT **REGISTERED** SECURITIES WILL BE DELIVERED BY REGISTERED MAIL AT THE RISK OF BUT WITHOUT EXPENSE TO THE OWNER, AND THAT **COUPON** SECURITIES WILL BE DELIVERED BY REGISTERED MAIL INSURED, AT THE RISK AND EXPENSE OF THE OWNER, UNLESS OTHER ARRANGEMENTS ARE MADE.

Name *(Print or type)* _____
Signature "s/ J. Nolan Renobato JNR" Date 13 May 1999
Address _____

(Complete only if not shown in blocks 2, 3 or 4)

Previous edition not usable (OVER)

NOTE: This form, when completed will not serve in place of security assignment(s).

INSTRUCTIONS FOR ASSIGNMENT OF REGISTERED SECURITIES

Registered transferable securities may be assigned in blank, to bearer, to a specified transferee, to the Secretary of the Treasury for exchange for coupon securities, or to the Secretary of the Treasury for redemption or for other securities offered at maturity, upon call or pursuant to an advance refunding offer. Nontransferable securities may be assigned only in the manner and to the extent provided in the offering circulars or special applicable regulations. The owner or his authorized representative must appear before and establish his identity to the satisfaction of an officer authorized to certify assignments, and execute the assignment in the presence of that officer. The officer must then fully complete the certification form. If the securities are assigned to a specified transferee, the name, taxpayer identifying number (social security account number or employer identification number), and the address of the assignee should be shown on the form in the space provided. It is not necessary to assign registered securities presented for denominational exchange, or redemption exchange if the registered securities issued upon such exchange will be inscribed in the same name as the registered securities surrendered. No assignment is required on registered securities presented for redemption for the account of the registered owner.

RESTRICTIVE ASSIGNMENT OF REGISTERED SECURITIES TO BE EXCHANGED FOR COUPON SECURITIES

To restrict delivery of the coupon securities, United States registered securities should be assigned to "The Secretary of the Treasury for exchange for coupon securities to be delivered to ____ _____."

(Name of person or organization to whom the coupon securities are to be delivered)

Securities with respect to which the Department of the Treasury acts as the transfer agency should be similarly assigned, except that the name of the issuing agency or corporation should be substituted for the words "The Secretary of the Treasury." If so assigned, this form should provide for delivery of coupon securities to the person or organization named in the assignments. If the assignments of the registered securities do not restrict delivery, the securities should not be forwarded through the mails without being insured, as such securities are in effect payable to bearer, and any holder may

present them to the Department of the Treasury and secure coupon securities in exchange therefor.

OFFICERS AUTHORIZED TO CERTIFY ASSIGNMENTS

(1) IN THE UNITED STATES

(a) Any and All Assignments:
Officers and employees of banks and trust companies incorporated in the United States, its territories or possessions or the Commonwealth of Puerto Rico, and Federal Savings and Loan Associations, or other organizations which are members of the Federal Home Loan Bank System, who have been authorized to (i) generally bind their respective institutions by their acts, (ii) unqualifiedly guarantee signatures to assignments of securities, or (iii) expressly certify assignments of securities. A complete list of classes of authorized officers may be obtained from any Federal Reserve Bank of the Bureau of the Public Debt.

CAUTION: NOTARIES PUBLIC HAVE ONLY LIMITED AUTORITY. SEE (B) BELOW.

(b) Limited Authority:
Assignments for redemption for the account of the assignor, or for redemption-exchange, or pursuant to an advance refunding offer for other securities to be registered in his name, or in his name with a joint owner, may be certified by:

Notaries Public and Justices of the Peace, postmasters, acting postmasters, assistant postmasters, inspectors-in-charge, chief and assistant chief accountants, and superintendents of stations of any post office in the United States, its territories and possessions, the Commonwealth of Puerto Rico and the Canal Zone.

(2) IN FOREIGN COUNTRIES, Any and All Assignments:

(a) United States diplomatic or consular representatives.

(b) Managers, assistant managers and other officers of foreign branches of banks or trust companies incorporated in the United States, its territories and possessions or the Commonwealth of Puerto Rico.

(c) Officers authorized to administer oaths, including notaries

public, but their official position and authority must be certified by the Unite States diplomatic or consular representative under seal of his office.

INSTRUCTION FOR REGISTRATION OF SECURITIES

Registrations requested for the new securities should be clear, accurate and complete. Registration of all securities owned by the same person, organization or fiduciary should be uniform. An appropriate taxpayer identifying number, i.e., an individual's social security account number or an employer identification number, should be shown in the requested registration. If securities are registered in the names of two or more individuals (whether jointly or in the alternative), the social security account number of either owner may be furnished; except if the owners are a minor, under either legal or natural guardianship, and an adult, the adult's number should be furnished. An individual's name may be preceded by an applicable title, such as "Dr." or "Rev.". A designation such as "Sr." or "Jr." should be used when necessary to distinguish the owner from any other person. A married woman's own given name, not that of her husband, must be used.

Unlike United States Savings Bonds, Treasury securities may not be registered in the name of a minor alone, or in the name of one person payable on death to another. They can not be registered in the names of two or more persons in their own right in any form whereby assignments by less than all the persons named in the registration (or all the survivors) may be recognized before maturity, or earlier redemption date pursuant to a call, or in connection with advance refunding exchanges.

Treasury securities may be registered as follows:

(1) In the name of one individual, for example: "John A. Doe (000-00-0000);" Mrs. Mary C. Doe (000-00-0000)."

(2) In the names of two or more persons with or without right of survivorship, for example: "Mrs. Mary C. Doe (000-00-0000) or John A. Doe or the survivor," John A. Doe (000-00-0000) or Mrs. Mary C. Doe or Miss Mary Ann Doe or the survivors or survivor;" "John A. Doe (000-00-0000) and Mrs. Mary C. Doe without the right of survivorship;" "Mrs. Mary C. Doe and John A. Doe (000-00-0000) as tenants in common."

(3) In the name of a natural guardian of a minor unless a legal guardian has been appointed for his estate, for example: "John Jones as natural guardian of Henry Jones,

a minor (000-00-0000)."

(4) In the names of the legally qualified executors, administrators, guardians, or similar representatives or fiduciaries of a single estate, for example: "John Smith, executor of the will (or administrator of the estate) of Henry J. Smith, deceased (000-00-0000);" "William C. Jones, guardian (or conservator, etc.) of the estate of James D. Brown, a minor (or an incompetent (000-00-0000);" William C. Jones, as custodian for John Smith, a minor (000-00-0000), under the California Uniform Gifts to Minors Act."

(5) In the name(s) and title(s) of the trustee(s) of a single duly constituted private trust estate, followed by an adequate identifying reference to the governing authority, for example: "John Jones and Blank Trust Company, Albany, N.Y., trustees under the will of Sarah Jones, deceased (00-0000000);" John Doe and Richard Doe, trustees under agreement with Henry Jones dated 2/9/50 (00-0000000);" If the trustees are numerous, or serve for limited terms, one or two of their names may be shown, followed by "et al," or all names may be omitted and "Trustees" used. If the trustees constitute a board or are authorized to act as a unit, their names should be omitted and "Board of Trustees" used, for example: "Board of Trustees of Plant Corp. Retirement Fund under collective bargaining agreement dated 6/30/55 (00-0000000)."

(6) In the name of a private corporation, unincorporated association, or partnership, followed by the organization's taxpayer identifying number "(00-0000000)." The full legal name of the orgarization must be included in the registration. The name of a private corporation must be followed by the words "a corporation" unless the fact of incorporation is shown in the name. The name of a self-governing organization which is not incorporated must be followed by the words "an unincorporated association." The name of a partnership must be followed by the words "a partnership," a nominee partnership" or "a limited partnership," as appropriate.

(7) In the name of any State, public corporation, or public body established by law, or in the title, without the name, of the public officer having official custody of the public

funds (other than trust funds) used to purchase the securities.

For other suggestions as to forms of registration see the general regulations with respect to United States securities (Department Circular No. 300, current revision).

NOTE: THE FURNISHING OF SOCIAL SECURITY NUMBERS IS REQUIRED BY THE GENERAL REGULATIONS GOVERNING UNITED STATES SECURITIES, I.E. DEPT. CIR. NO. 300. REV.. THE NUMBERS ARE USED TO MAINTAIN OWNERSHIP RECORDS OF THE SECURITIES. OTHER INFORMATION REQUESTED BY THIS FORM IS ALSO REQUIRED UNDER THE ABOVE REGULATIONS TO ESTABLISH THE RIGHTS, AUTHORITY, AND/OR ENTITLEMENT OF THE SIGNERS. FAILURE TO FURNISH ANY OF THE REQUESTED INFORMATION MAY PREVENT COMPLETION OF THE TRANSACTION.